

TESTIMONY OF NANCY ZUCKER BOSWELL  
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BEFORE THE  
SENATE COMMITTEE ON FOREIGN RELATIONS

ON THE  
OAS INTER-AMERICAN CONVENTION AGAINST CORRUPTION

MAY 2, 2000

Mr. Chairman and members of the committee on Foreign Relations, I am very pleased to be invited to testify before you today on behalf of Transparency International. TI is a non-governmental organization that is dedicated to combating international corruption. Since its founding in 1993, it has grown rapidly and now has grass roots national chapters in over 70 countries. Twenty of them are in the Americas, including in Argentina, Brazil, Canada, Chile, Colombia, Peru, Mexico, Venezuela and the US.

The US chapter, of which I am the Managing Director, is supported by a broad coalition, including more than thirty major American companies, lawyers, accountants, scholars, jurists, development experts, and other distinguished individuals.

In Latin America, as in many other parts of the world where corruption is systemic and institutions are weak, corruption has undermined development, distorted income distribution, and corroded trust in democratic institutions, with profound consequences both within and beyond national borders. It has also added to the cost of business. Latin America is an important growth market, but corruption has undermined the potential for growth.

The Inter-American Convention Against Corruption can make a major contribution to addressing these problems. It will strengthen the rule of law and transparency in Latin America. This will create a more hospitable environment for business, promote development, and build more accountable and democratic institutions.

The Convention has already been ratified by 18 nations, including most every major Latin American country. In order to have a practical impact, the Convention must be implemented and effectively enforced. US leadership is vital to achieving this objective, and prompt US ratification is needed or this effort will falter. The Convention clearly embodies our values and ratification requires no implementing action on our part. Senate

action will directly benefit US interests and is broadly supported by leading business organizations.<sup>1</sup> They have signed a letter in support of Senate ratification of the Convention, and we would like to ask the Chairman to submit it into the record of this hearing.

I would like to highlight in my testimony three primary reasons for prompt Senate action:

- first, there is now a window of opportunity for reform in the Americas;
- second, the Convention can make a major contribution to broader anti-corruption efforts in the hemisphere;
- third, US leadership is essential to securing its objectives.

#### I. There Is Now A Window Of Opportunity For Reform In The Americas

In 1977, when Congress enacted the Foreign Corrupt Practices Act,<sup>2</sup> it took the first historic step on the path to end widespread bribery in international business. It was expected that others would also criminalize bribery of foreign officials.

For almost two decades, no one followed. But, in recent years, there has been a profound change in attitude. Thanks in part to the work of Transparency International, the issue is now high on the international agenda. Mounting evidence has demonstrated that corruption has severe economic, social and political costs with adverse effects on the private sector, civil society, the government and the development assistance community. This coincidence of interests has fueled the growth of the anti-corruption movement and created a window of opportunity for reform.

By 1994, following massive bribery scandals and the removal of several Latin presidents from office, there was a new willingness to confront the issue. There was strong public demand for change and new leadership elected to take action.

The US found support among the leaders for placing the issue of corruption on the agenda of the Miami Summit of the Americas. The Summit Declaration stated that “effective democracy requires a comprehensive attack on corruption” and that “corruption in both public and private sectors weakens democracy and undermines the legitimacy of governments and institutions.”<sup>3</sup>

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<sup>1</sup> These include the Association of American Chambers of Commerce of Latin America, the Brazil-US Business Council, the Business Roundtable, the Council of the Americas, , the Mexico-US Business Committee, the National Association of Manufacturers, the National Foreign Trade Council, PhRMA, the US Chamber of Commerce, and the US Council for International Business.

<sup>2</sup> Pub. L. No. 95-213, 91 Stat. 1494 (1977).

<sup>3</sup> Summit of the Americas, Plan of Action, No. 5, Miami, Fla., Dec. 11, 1994.

The leaders committed to negotiate a hemispheric agreement and to undertake the many necessary economic, legal and regulatory reforms that are part of an effective anti-corruption program.

Fifteen months after the Summit, the Inter-American Convention Against Corruption was concluded and signed by 21 nations.<sup>4</sup> The Convention's rapid conclusion is striking testimony both to US leadership and to the regional consensus for action.

Since its conclusion, it has been ratified by 18 countries, including Argentina, Chile, Colombia, Costa Rica, Panama, and Venezuela. Recent elections in many of these countries have brought to power a new set of leaders committed to intensify reform efforts.

## II. The Convention Contributes To Broader Reform Efforts in the Hemisphere

The Convention is an important part of the broader anti-corruption agenda that is needed to address corruption. That agenda was agreed to at the 1994 Summit and includes deregulation and privatization, simplification of administrative procedures and creating more independent judicial systems. It also includes private sector action; stricter auditing and accounting standards; and greater freedom of the press, wider publication of information and more meaningful public participation.

The criminal and preventive measures of the Convention are important steps in this broad approach. The principal provisions of the Convention call on parties to:

- Criminalize solicitation or acceptance of bribes and other corrupt acts by public officials;
- Strengthen cooperation in criminal investigations and preclude the use of bank secrecy laws or political grounds as the bases for refusing cooperation;
- Promote "preventive" measures, including disclosure of assets and conflict of interest standards for public officials, and strong procurement rules.

The Convention is far broader in scope than the OECD Convention on Bribery of Foreign Public Officials,<sup>5</sup> reflecting the complex nature of corruption and the comprehensive approach that is needed to confront it. The OECD Convention, which this body ratified unanimously on July 31, 1999, requires the 34 signatory nations to enact legislation similar to the FCPA, prohibiting companies from bribing foreign public officials to obtain or retain business or other improper advantage. The OECD Convention will have a marked impact on the actions of major US competitors because they are virtually all based in OECD member countries.

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<sup>4</sup> Reprinted at 35 I.L.M. 724 (1996).

<sup>5</sup> Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, reprinted at 37 I.L.M. (1998).

The OECD Convention addresses only the “supply” side, e.g., the companies that pay bribes. As we indicated when TI testified before this committee on June 9, 1998, the “demand” side also has to be addressed and that is what the Inter-American Convention does. It focuses primarily on the public officials who demand or take bribes. Together, these two landmark conventions provide a pincer attack on corruption.

### III. US Leadership Is Essential To Securing Its Objectives

However, their full potential will only be realized if there is effective implementation and enforcement. US leadership is critical to accomplishing this objective.

At this committee’s hearings on the OECD Convention, Chairman Helms expressed his skepticism about the will of the OECD signatories to implement and fully enforce their commitments. In ratifying that convention, the Senate recognized the importance of a monitoring process.

Since the OECD Convention entered into force on February 15, 1999, a vigorous peer review monitoring process has made encouraging progress moving signatories to fulfill their commitments. It has reviewed the implementing legislation of most of the 21 countries that have ratified to date. TI National Chapters have played an active part in the monitoring process and have submitted their analysis of implementing legislation.

Many countries have been found to be in compliance. Those that are not have been told to address the deficiencies. Peer pressure is moving them to take remedial steps and warning others not to submit inadequate measures.

A peer review process will be even more important for the Inter-American Convention because its implementation will be more complex and time-consuming. Considerable new legislation and regulations will be required to bring countries into compliance. Technical expertise and best practices will be necessary to ensure high standards are met. Many government agencies will have to participate in the process and there will be competing demands for resources.

Currently, the Inter-American Convention does not provide for a peer review monitoring process, and the OAS follow-up program involves only country workshops and technical assistance.

Transparency International has been encouraging the OAS to establish such a process, and there has been some good progress in building consensus over the past six months. Last November, we brought together experts from across the hemisphere to consider how best to make progress. The experts concluded that a peer review process will be essential to secure effective implementation, especially in countries where laws are on the books but not always effectively enforced.

The OAS is currently working to strengthen the follow-up process. In February, the Finance Ministers of the Western Hemisphere issued a statement calling for the

establishment of a multilateral mutual review mechanism. In March, the OAS Secretary General opened a Special Session on the Convention by noting an emerging consensus for such mechanisms.

Nonetheless, there is still strong resistance to creating such a mechanism. A key stumbling block is that the US has not yet ratified the Convention. It will be difficult for the US to press for a strong follow-up process until it has ratified.

Prompt Senate ratification is clearly a prerequisite step to creating the process and to enabling the US to fully participate in it. Unless the US participates, progress may stall. Our ability to stimulate action in other countries will be handicapped if the US is not at the table.

Ratification will demonstrate the importance we place on the Convention as a key element of an effective anti-corruption strategy. It will send a strong message of support for reformers and remove any pretext others might use for not moving forward.

This is a non-controversial agreement that embodies US values. It enjoys the broad support of all sectors, including the leading business organizations. To our knowledge, no organization opposes it.

The Administration has indicated that no implementing legislation is needed because existing US laws and practices are already in compliance with the Convention. As with the OECD Convention, we think that the Inter-American Convention should be ratified unanimously.

Chairman Helms placed stringent reporting requirements on the resolution of ratification for the OECD Convention. TI recommended that this committee ask the State Department to provide periodic progress reports on the OECD Convention. Today, we respectfully suggest again that the Committee continue to maintain its important oversight function by asking, as a condition for ratification, that it call for progress reports on the Inter-American Convention.

### Conclusion

In conclusion, the Inter-American Convention can make a real difference in reducing corruption and promoting the rule of law and greater accountability across the hemisphere. These reforms will significantly raise standards, improving market opportunities, promoting equitable development, and making democratic institutions more accountable. For over twenty years, the US has taken the lead in promoting anti-corruption reform at home and around the world. Ratification of this Convention will send a strong signal that the US continues to place the utmost importance on good governance and expects others to do the same.

We would like to express our appreciation for the Committees's scheduling this hearing and for its consideration of this important instrument.